



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0175]

Hours of Service of Drivers: National Propane Gas Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request from the National Propane Gas Association (NPGA). NPGA sought an exemption from various hours-of-service (HOS) requirements to enable the propane industry to prepare and respond to peak periods of consumer demand among residential, agricultural, and commercial consumers in anticipation of, during, and to recover from emergency conditions. NPGA requests that the exemption apply on a per-driver, per-route basis, and that each company that elects to utilize it must maintain appropriate documentation to demonstrate the presence of peak consumer demand conditions within the scope of the exemption. FMCSA analyzed the exemption application and public comments and determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards at (202) 366-2722 or richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2022-0175” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2022-0175” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify

the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation Requirements

FMCSA's hours of service (HOS) regulations in 49 CFR part 395 place limits on the amount of time drivers of commercial motor vehicles (CMVs) may drive to reduce the possibility of driver fatigue. The regulations in 49 CFR 395.3(a)(2)—commonly referred to as the 14-hour “driving window”—allow an individual a period of 14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours. The regulations in 49 CFR 395.3(a)(3) prohibit individuals from driving again after 11 hours driving until they have been off duty for a minimum of 10 consecutive hours. The regulation in 49 CFR 395.3(b)(1) prohibits a motor carrier that does not operate vehicles every day of the week from requiring or permitting a driver to drive, nor may the driver drive, a CMV after being on duty 60 hours during any 7 consecutive days, and 49 CFR 395.3(b)(2) prohibits a motor carrier that operates CMVs every day of the week from requiring or permitting a driver to drive, nor may the driver drive, a CMV after being on duty 70 hours in any 8 consecutive days. These are generally called the 60- and 70- hour “weekly” limits.

Applicant's Request

The National Propane Gas Association (NPGA) requests a five-year exemption for its member company drivers to extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours; extend the 11-hour driving period in § 395.3(a)(3) to no more than 14 hours, following 10 consecutive hours off duty; waive the 60- and 70-hour rules in § 395.3(b) for a period of no more than six consecutive days; and a period of six consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours. The exemption request is made in order to enable the propane industry

to prepare and respond to peak periods of consumer demand among residential, agricultural, and commercial consumers.

NPGA is the national trade association of the propane industry with a membership of nearly 2,500 companies and 36 State and regional associations representing members in all 50 States. Its membership includes retail marketers of propane gas who deliver fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. NPGA's petition states that, in order to meet consumer demand, long- and short-haul propane drivers often reach the maximum "weekly" HOS limits within three or four days, making them unavailable for the rest of the "week" while consumer demand continues. According to NPGA, the purpose of its request is to prepare and serve residential, commercial, and agricultural consumers ahead of and during peak consumption periods efficiently and safely. To clearly define the scope in its application, NPGA provided a brief outline of the terms and conditions that would apply to those individuals providing propane services for periods of peak consumer demand.

IV. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent or greater level of safety, the NPGA application states that before operating under the special exemption, drivers must complete the Fatigue and Wellness Awareness course available online from the Propane Education & Research Council. NPGA further adds that recordkeeping relating to use of a special permit for exemption shall be in accordance with requirements of 49 CFR 390.29, 49 CFR 390.31, and 49 CFR 395.8. Drivers operating under the exemption would be allowed only six consecutive days to utilize the exemption, and NPGA members must comply with all other provisions of the Federal Motor Carrier Safety Regulations.

V. Public Comments

On September 30, 2022, FMCSA published notice of this application and requested public comments (87 FR 59486). The Agency received seven comments, six of which opposed the exemption. The six commenters that opposed the exemption were the following: the Commercial Vehicle Safety Alliance (CVSA); Owner-Operator Independent Drivers Association (OOIDA); Advocates for Highway and Auto Safety (Advocates)/Truck Safety Coalition (TSC); AWM Associates, LLC; Rebecca Transport; and one individual commentor. One commenter took no position on the application.

Advocates/TSC stated "...the exemption could be triggered by such common occurrences as cold temperatures and fallen trees [and t]he Petitioner also fails to meet the statutory requirements for requesting such an exemption." CVSA opposed granting the exemption and suggested that "... FMCSA find alternative solutions to meet this need that are narrower and more targeted to the individual scenarios. One possible solution would be to direct the service centers to monitor needs and coordinate with industry to provide region specific waivers as appropriate."

OOIDA's comment focused on the impact the exemption would have on individual drivers: "While we believe drivers should be provided maximum flexibility under HOS regulations, we fear this proposal could lead to greater coercion of employee drivers, with propane providers applying pressure to complete hauls while drivers are fatigued. Furthermore, it is unclear at what point drivers may waive the 60- and 70-hour rule." AWM Associates, LLC, provided the following comment: "If a community is impacted, then the local government official may declare an emergency per Part 390.23 so the drivers needed may function as needed. A blanket exemption is far reaching and would exempt areas not impacted by the shortage of drivers."

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated the NPGA application and the public comments and denies the exemption. Research studies demonstrate that long work hours contribute to

driver fatigue and can cause harm to a driver's health. Research also shows that crash risk increases with long work hours. The Agency established the HOS regulations to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue. NPGA's application does not provide an analysis of the safety impacts the requested exemption from the HOS regulations may cause. It also does not provide countermeasures to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. The Agency cannot ensure that the exemption would achieve the requisite level of safety.

Furthermore, what constitutes an emergency, sufficient to be exempted from existing safety regulations, is a fact-specific inquiry. Among the conditions specified in the NPGA application were "railcar delays in excess of five business days," "limitation of pipeline services due to pipeline allocation," and "weather- and storm-related events including but not limited to fallen trees, rock and mudslides and other debris on the roadways . . ." The Agency does not find a categorical exemption for the scenarios requested is appropriate.

For the above reasons, NPGA's exemption application is denied.

Robin Hutcheson,
Administrator.

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